

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

PAUL POGUE and)	
PAUL POGUE, in his capacity as)	
owner of SURVEYORS' PARK)	
)	
Plaintiffs,)	CIVIL ACTION NUMBER
)	
v.)	2:06-cv-148-MHT
)	
TONY CHANDLER, et al.,)	
)	
Defendants.)	

DEFENDANTS' RESPONSE TO PLAINTIFF'S

"TIMELY OBJECTION AND FRCP 56(f) MOTION"

COME NOW the Defendants, by and through counsel, and file this response to the document filed by the Plaintiff entitled "Plaintiffs' Timely Objection and FRCP 56(f) Motion" filed on November 3, 2006. The Defendants respond as follows:

1. Paragraph 1 under the heading "Objection" in the Plaintiff's motion appears to be a claim that the Defendants' Motion to Dismiss or in the Alternative, for Summary Judgment was not timely filed.
2. The Court's Scheduling order of July 6, 2006 directed that dispositive motions were to be filed "no later than September 29, 2006"

along with “[a] brief and all supporting evidence...” The Defendants’ motion, brief, and supporting evidence were filed with the Court on September 29, 2006. The Defendants’ dispositive motion was clearly filed within the time allowed by the Court. The Plaintiff’s objection is groundless and frivolous.

3. The remainder of the Plaintiff’s document, under the heading “FRCP 56(f) motion and response” appears to be a request for additional time for the Plaintiff to conduct discovery and/or a request for the Court to compel the Defendants to “make themselves available for discovery.”

4. At all times since the filing of this action on February 17, 2006, the Defendants have been “available for discovery.” To the extent that the document filed by the Plaintiff is to be construed as a motion to compel the Defendants to participate in discovery, such a motion is due to be denied because there has been no lack of cooperation in the discovery process by the Defendants and there is therefore nothing for this Court to compel.

5. The Plaintiff’s motion states no reasons that the Plaintiff has been prevented from “present[ing] by affidavit facts essential to justify the party’s opposition” to the Defendants’ Alternative Motion for Summary Judgment as required by Rule 56(f), Federal Rules of Civil Procedure.

6. During the period between the Court's Scheduling Order on July 6 and the October 30 date set by the Court for completion of discovery, the Plaintiff made no effort whatsoever to conduct any form of discovery. There is no justification for the allowance of additional time for the Plaintiff to attempt to obtain affidavits or conduct depositions when the Plaintiff made no effort to conduct discovery during the period specified by the Court.

7. The Court's Scheduling Order of July 6 allowed for any party objecting to the deadlines imposed by the Court to object to those deadlines within 14 days from the date of the order. Absent such an objection, the deadlines set out in the order were to be "binding on the parties." To the extent that the Plaintiff is requesting the Court to extend the deadline for the completion of discovery, the motion is due to be denied because a) the Plaintiff failed to file a timely objection to the deadlines established in the Court's Scheduling Order; and b) the Plaintiff has presented no reason for the granting of a continuance to allow additional time for discovery under Rule 56(f).

WHEREFORE the Defendants respectfully request the Court to deny the Plaintiff's "Timely Objection and FRCP 56(f) Motion."

Respectfully submitted,

TROY KING
ATTORNEY GENERAL

BY

s/Charles T. Conway
Assistant Attorney General
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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of November, 2006, a copy of the foregoing has been electronically filed with the Clerk of the Court using the CM/ECF system, and that a copy of the same has been sent by First Class Mail to the plaintiff:

Paul Pogue
301 Kahn Street
The Mays Building
Montgomery, Alabama 36104

s/Charles T. Conway
Assistant Attorney General

Address of counsel:

Charles T. Conway
Alabama Forestry Commission
P.O. Box 302550
Montgomery, AL 36130
Telephone: (334) 240-9342
Fax: (334) 240-9390
E-mail: Tom.Conway@forestry.alabama.gov